IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 6015 of 2006(N)

OP(ELE.)164/1994 of ADDL.DISTRICT COURT-I,MAVELIKKARA
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PETITIONER:

IBRAHIM KUTTY,
PAPPADIYIL, MALAMEL BHAGOM MURI,
KEERIKKAD VILLAGE.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENTS:

KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY THE SECRETARY,
VAIDYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 6015/2006 N

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE OP (ELE.) 164/94 BEFORE THE ADDL. DIST. COURT, MAVELIKARA DT. OCT, 1994.

EXT.P2. COPY OF THE APPLICATION FOR RESTORATION IA NO. 1299/2004 IN EP ELE. 164/94 BEFORE THE ADDL. DIST. COURT, MAVELIKARA DT. 9/12/2004.

EXT.P3. COPY OF THE OBJECTION IA NO. 1299/2004 IN OP ELE. NO. 164/94 BEFORE THE ADDL. DIST. COURT, MAVELIKARA DT. 29/07/2005.

EXT.P4. COPY OF THE COMMON ORDER IN IA NO. 1299/2004 AND 1300/04 IN OP ELE. NO. 164/94 ON THE FILE OF THE ADDL. DIST. COURT- I, MAVELIKARA DT. 7/9/04.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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M.N.KRISHNAN, J

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W.P.(C) No.6015 OF 2006

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Dated this the 15th day of October 2007

JUDGMENT

This writ petition is preferred against the order of the Addl.District Court-I, Mavelikkara in I.A.Nos.1299 & 1300 of 2004 in O.P.(Ele)No.164 of 1994. Two applications are filed, i.e. one to condone the delay of 4 years, 3 months and 28 days and the other is to restore the case, which were dismissed for default. It is submitted that 18 cents of land belonging to the petitioner had been affected by the drawl of electric line. It is true that from a detailed and discussed order of the Addl. District Judge, it can be seen that two earlier applications were filed and they were dismissed and this is the 3rd application and therefore the court was not inclined to entertain those applications and dismissed the same. I do not find any grievous mistake in such procedure.

2. Learned counsel for the K.S.E.B. has very strongly opposed this application as well. The theory of awarding compensation in matters where parties are deprived of their property are to be viewed in a different angle. In the land acquisition proceedings, land acquisition court has no power to

dismiss a reference for default and it has to answer the points referred to and it has to apply its mind. It is true that technically an electricity O.P. may not come within the para metres of a reference, but the principle underlined in all these cases are to give a reasonable compensation to the person who is deprived of his property. It can be seen that the Lawyer, who was conducting the litigation passed away and it has caused some difficulty and therefore I think the interest of justice requires that an opportunity can be given to the claimant to put forward his contention on merits. If really a reasonable compensation has been awarded, certainly no interference is called for. But at the same time it is to be stated that delay alone shall not be a factor to throw him out.

Therefore, applying the broad principles of natural justice, I am inclined to grant the petitioner an opportunity. I condone the delay, set a side the order and direct the court below to restore the O.P.(Ele.)164/1994 to file and dispose it of in accordance with law, after giving equal opportunity to hear both sides. Parties are directed to appear before the court below on 14.11.2007 and the court is directed to dispose of the matter within 3 months from the date of first appearance of the parties. This shall

not be cited as a precedent in any other case.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-